

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MASTERFILE CORPORATION

Plaintiff,

v.

COGNENT, INC. and
MARTIN PAREDES,

Defendants.

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Civil Action No. 3:11-cv-91

COMPLAINT

Plaintiff, Masterfile Corporation ("Masterfile"), by its attorneys, for its complaint against Defendants, Cognent, Inc. ("Cognent") and Martin Paredes ("Paredes", jointly "Defendants"), alleges as follows:

JURISDICTION AND VENUE

1. This claim arises under the provisions of the Copyright Act of the United States, as amended, 17 U.S.C. § 1 et seq., and is for infringement of a copyright registered in the Copyright Office of the United States.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and personal jurisdiction over Defendant pursuant to § 48.193(1)(a).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) in that the Defendant is a corporation subject to a personal jurisdiction in this district.

PARTIES

4. Masterfile is a well known stock photography agency residing at 3 Concorde Gate, Fourth Floor, Toronto, Ontario, Canada M3C 3N7.

5. Masterfile is in the business of licensing reproduction rights in photographs to users for a fee.

6. Upon information and belief, Defendant Cognent is engaged in the business of information technology.

7. Upon information and belief, Defendant Cognent is a corporation operating, conducting, engaging in, or carrying on a business or business venture in Texas.

8. Upon information and belief, Defendant Cognent has an office located at 4712 Woodrow Bean, El Paso, Texas 79924.

9. Upon information and belief, Defendant Cognent provides its services and equipment to customers in Texas and solicits customers in Texas through the following website (the "Website"): www.elpasowebs.com.

10. Upon information and belief, Defendant Paredes is an individual residing at 207--3rd Street, Van Horn, Texas 79855.

11. Upon information and belief, Defendant Paredes is the owner of Defendant Cognent and holds the title of CEO with Cognent.

12. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery, that Defendant Paredes holds a significant ownership in Defendant Cognent.

13. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Cognent is a dominant influence in the corporation and has the capacity to control the acts of the corporation.

FACTS

14. On or about January 28, 2009, Masterfile discovered that Defendant Cognent was using twelve (12) photographs (the “Photographs”) owned by Masterfile on the Website owned by Defendant Cognent. Promptly after discovering the infringement, Masterfile sent notice of the infringement to Defendants. A true and correct copy of that notice is attached as Exhibit A. The notice included the screens captured directly from Cognent’s website on or about January 29, 2009, and specifically identified each of Masterfile’s copyrighted Photographs and the location(s) that each appeared on the website.

15. Masterfile complied in all respects with the Copyright Act of the United States and secured the exclusive right and privilege in and to the copyright of the Photographs identified by Masterfile as:

| IMAGE CODE | DESCRIPTION | COPYRIGHT REGISTRATION | EFFECTIVE DATE |
|-------------------|----------------------|-----------------------------------|---------------------------|
| 700-00025235 | Mature Businessman | VA 1-023-866 | 17-Jul-00 |
| 700-00028480 | Silhouette/Men | VA 1-023-866 | 17-Jul-00 |
| 700-00028978 | Wire Globe with Ring | VA 1-023-866 | 17-Jul-00 |
| 700-00029157 | Ring of Hands | VA 1-023-866 | 17-Jul-00 |
| 700-00029606 | Antique Safe | VA 1-023-866 | 17-Jul-00 |
| 700-00030143 | Businessman | VA 1-023-866 | 17-Jul-00 |
| 700-00030287 | Business Meeting | VA 1-023-866 | 17-Jul-00 |
| 700-00030432 | Business Meeting | VA 1-023-866 | 17-Jul-00 |
| 700-00031681 | Businesswoman | VA 1-023-866 | 17-Jul-00 |
| 700-00032040 | Stack of Discs | VA 1-023-866 | 17-Jul-00 |
| 700-00032445 | Circuit Board | VA 1-023-866 | 17-Jul-00 |
| 700-00032488 | @ Symbol on Computer | VA 1-023-866 | 17-Jul-00 |

Copies of the certificate of registration(s) for these Photographs, which were registered as individual images within a compilation, are attached as Exhibit B.

16. Defendant Cognent infringed Masterfile's copyright in the Photographs by displaying the Photographs on Defendant's website without permission or authorization.

17. Defendant Cognent is not, and has never been, licensed or otherwise authorized to use the Photographs.

18. The Website is located on the World Wide Web and accessible throughout the world, including in Texas, via the Internet.

19. The Website was developed and implemented at the direction of Defendant Paredes.

20. Defendant Paredes had the ability to supervise and control the development of the Website.

21. Defendant Paredes had the ability to supervise and control content, including photographs, displayed on the Website.

22. Masterfile notified Defendants that Defendants' unauthorized use of the Photographs violates Masterfile's exclusive rights as copyright owner, and gave the Defendants an opportunity to enter into a retroactive licensing agreement or make payment for Defendants' unauthorized use prior to instituting the present action.

COUNT I

CLAIM FOR COPYRIGHT INFRINGEMENT Under 17 U.S.C. §§ 106 and 501

23. Masterfile incorporates by this reference paragraphs 1-22 above as if fully set forth herein.

24. Masterfile is owner of the copyright in and to the Photographs.

25. Defendant Cognent has made unauthorized copies of the Photographs and displayed the same on its Website, without the consent of Masterfile.

26. By making the unauthorized copies, and displaying the unauthorized copies, the Defendant Cognent infringes Masterfile's copyright in and to the Photographs.

27. As a consequence of the foregoing infringement, Masterfile has suffered injury.

28. As a further consequence of the foregoing infringement, Defendant Cognent has been unjustly enriched by using the Photographs without payment of the license fee therefore.

29. Defendant Cognent has caused Masterfile to suffer injury and financial harm including, the loss of its license fee, and infringement of Masterfile's proprietary interests.

COUNT II

CLAIM FOR COPYRIGHT INFRINGEMENT Under 17 U.S.C. §§ 106 and 501

30. Masterfile incorporates by this reference paragraphs 1-22 above as if fully set forth herein.

31. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Paredes is a dominant influence in the corporation.

32. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Paredes has the capacity to control the acts of the corporation.

33. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Paredes had the ability to supervise the infringing acts of Defendant Cognent.

34. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Paredes had a financial interest in the infringing acts of Defendant Cognent.

35. There is likely to be evidentiary support, after a reasonable opportunity for further investigation or discovery that Defendant Paredes directed the construction of the Website and/or personally participated in the infringing acts of Defendant Cognent.

36. Defendant Paredes is therefore jointly and severally liable for the infringing acts of Defendant Cognent.

COUNT III

**CLAIM FOR INTENTIONAL REMOVAL OF COPYRIGHT MANAGEMENT
INFORMATION UNDER 17 U.S.C. § 1202(b)**

37. Masterfile incorporates by this reference paragraphs 1-36 above as if fully set forth herein.

38. Each of the Photographs contained embedded copyright management information protected under 17 U.S.C. § 1202(b).

39. One or more of the Defendants either intentionally removed, or authorized, instructed or otherwise directed a third party to remove, the copyright management information with the intent to induce, enable, facilitate, or conceal an infringement of Masterfile's rights under the Copyright Act.

40. Such conduct as aforesaid is a violation of 17 U.S.C. § 1202(b).

41. By reason of said violation, Masterfile is entitled to recover statutory damages under 17 U.S.C. § 1203(c) in the amount of between \$2,500.00 and \$25,000 for each of the Photographs wherein the copyright management information was removed as aforesaid, for a total of at least \$30,000.00, plus costs and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Masterfile prays that this Court:

1. Preliminarily and permanently enjoin Defendants, its officers, directors, principals, agents, servants, employees, successors and assigns from:

a. copying, or making any unauthorized use, including the making of derivatives, of the Photographs, in any form, including but not limited to print or electronic.

b. manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any promotional material bearing any simulation, reproduction, counterfeit, or copy of the Photographs.

c. using any simulation, reproduction, counterfeit, or copy of the Photographs, in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any product or service of Defendants.

2. Direct Defendants to deliver for destruction all products, magazines, signs, prints, packages, dies, wrappers, receptacles, digital files and advertisements in its possession or under its control, bearing the Photographs, or any simulation, reproduction, counterfeit, or copy, and all plates, molds, matrices and other means of making the same.

3. Direct Defendants to account for and relinquish to Masterfile all gains, profits, and advantages derived by Defendants through Defendants' infringement of Masterfile's copyright.

4. Award to Masterfile such damages, including actual or statutory damages, as Masterfile is entitled to as a consequence of Defendants' infringement of Masterfile's copyright.

5. Award to Masterfile such damages, including actual or statutory damages, as Masterfile is entitled to as a consequence of Defendants' removal of copyright management information.

6. Award to Masterfile the costs of this action together with reasonable attorney's fees.

7. Award to Masterfile such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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